

CHAPTER NO.768

HOUSE BILL NO. 3223

By Representative Rinks

Substituted for: Senate Bill No. 3344

By Senator Cooper

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 25, Part 3, to enact the "Unfair Retailer's Cigarette Sales Law".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 25, Part 3, is amended by deleting the part in its entirety and by substituting instead the following:

Section 47-25-301. This part shall be known and may be cited as the "Unfair Retailer's Cigarette Sales Law."

Section 47-25-302. As used in this part, unless the context otherwise requires:

(1) "Basic cost of cigarettes" means the invoice cost of cigarettes to the retailer or the replacement cost of cigarettes to the retailer within thirty (30) days prior to the date of sale, in the quantity last purchased, whichever is lower, absent any cash or other discounts and/or concessions of any kind, to which shall be added the full face value of any stamps which may be required by any cigarette tax law of this state now in effect or hereafter enacted, and any other taxes or fees imposed by Title 67, Chapter 4, Part 10, if not already included by the manufacturer in this list price;

(2) "Commissioner" means the Commissioner of Revenue;

(3) "Cost of doing business by the retailer" is eight percent (8%) of the basic cost of cigarettes to the retailer;

(4) "Cost to the retailer" means the "basic cost of cigarettes" to the retailer plus the "cost of doing business by the retailer;"

(5) "Retailer" has the same meaning ascribed to the words "retail dealer" in § 67-4-1001;

(6) "Sell at retail," "sales at retail" or "retail sales" means and includes any transfer of title to tangible personal property for a valuable consideration made in the ordinary course of trade or usual prosecution of the seller's business, to the purchaser for consumption or use; and

(7) "Tobacco distributor" or "person" has the same meaning as ascribed in § 67-4-1001.

Section 47-25-303. (a) It is a Class C misdemeanor for any retailer, with intent to injure competitors or destroy substantially or lessen competition, to advertise, offer to sell, or sell at retail, cigarettes at less than cost to the retailer.

(b) Evidence of advertisement, offering to sell or sale of cigarettes by any retailer at less than cost to the retailer shall be prima facie evidence of both a violation of the Unfair Retailer's Cigarette Sales Law, compiled in this part, and of intent to injure competitors or destroy substantially or lessen competition.

(c) It is the intention of the General Assembly that the provisions of this part be enforced by the Department of Revenue.

Section 47-25-304. Any individual who, as a director, officer, partner, member, or agent of any person violating the provisions of this part, assists or aids, directly or indirectly, in such violation is, equally with the person for whom such individual acts, guilty of a Class C misdemeanor.

Section 47-25-305. Any contract, express or implied, made by any person, firm, or corporation in violation of any of the provisions of this part is declared to be an illegal and void contract and no recovery thereon shall be had.

Section 47-25-306. (a)(1) Any person injured by any violation of this part, or any trade association which is representative of such a person, may maintain an action in any court of equitable jurisdiction to prevent, restrain, or enjoin such violation.

(2) If, in such action, a violation of this part is established, the court shall enjoin and restrain or otherwise prohibit such violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of the suit.

(3) In such action, it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in the action, in addition to such injunctive relief and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this part may maintain an action for damages alone in any Court of General Jurisdiction, and the measure of damages in such action shall be the same as prescribed in subsection (a).

Section 47-25-307. In all advertisements, offers for sale, or sales involving two (2) or more items, at least one (1) of which items is cigarettes, at a combined price, and in all advertisements, offers for sale, or sales involving the giving of any concession of any kind whatsoever (whether coupons or otherwise), the retailer's selling price shall not be below the cost to the retailer of all articles, products, commodities, and concessions included in such transactions.

Section 47-25-308. (a) The Department of Revenue, through the Commissioner, shall administer and enforce the provisions of this part.

(b)(1) For an initial violation or noncompliance with any provision of this part by a retail dealer, a penalty shall be imposed not to exceed two hundred fifty dollars (\$250);

(2) For any second violation or noncompliance with any provision of this part by any person who has previously been found in violation of subdivision (b)(1), a penalty shall be imposed not to exceed five hundred dollars (\$500); and

(3) For any subsequent violation(s) or noncompliance with any provision of this part, by any person who has previously been found in violation of subdivision (b)(2), a penalty shall be imposed not to exceed one thousand dollars (\$1,000).

(c) Any person whose license is revoked or suspended under this section, and who continues to engage in the unauthorized sale, distribution or handling of cigarettes in this State, either directly or through any agent or third party acting on behalf of such person, shall be charged with an additional violation of this part and shall also be in violation of § 67-4-1015.

(d) Any person who is adversely affected by a decision of the Commissioner may petition the Department of Revenue for a hearing pursuant to § 67-1-105, which will be held in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(e) In enforcing the provisions of this part, the Commissioner shall consider the cost and effectiveness of administration and endeavor to administer this part in the most cost-efficient manner.

Section 47-25-309. The provisions of this part do not apply to sales at retail made where cigarettes are:

(1) Advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and the advertising, offer to sell, or sale shall state the reason thereof and the quantity of such cigarettes advertised, offered for sale, or to be sold;

(2) Advertised, offered for sale, or sold as imperfect or damaged and the advertising, offer to sell, or sale shall state the reason thereof and the quantity of such cigarettes advertised, offered for sale, or to be sold;

(3) Sold upon the complete final liquidation of a business; or

(4) Advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

Section 47-25-310. Participation in a manufacturer's incentive program, discount price program or special price program shall not cause a retailer to be in violation of this act.

SECTION 2. The provisions of this act shall take effect on becoming a law, the public welfare requiring it.

PASSED: April 2, 1998


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 16th day of April 1998


DON SUNDQUIST, GOVERNOR